

SHAWN MEERKAMPER (SBN 296964)
shawn@transgenderlawcenter.org
TRANSGENDER LAW CENTER
P.O. Box 70976
Oakland, California 94612
Telephone: (510) 587-9696

AMANDA C. GOAD (SBN 297131)
agoad@aclusocal.org
ACLU FOUNDATION OF SOUTHERN CALIFORNIA
1313 W. 8th Street, Suite 200
Los Angeles, California 90017
Telephone: (213) 977-9500

CHRISTINA S. PAEK (SBN 341994)
cpaek@lambdalegal.org
LAMBDA LEGAL
4221 Wilshire Boulevard, Suite 280
Los Angeles, California 90010
Telephone: (213) 382-7600

NORA HUPPERT (SBN 330552)
nhuppert@lambdalegal.org
LAMBDA LEGAL
65 E. Wacker Place, Suite 2000
Chicago, Illinois 60601
Telephone: (312) 663-4413

RICHARD SAENZ (*pro hac vice*)
rsaenz@lambdalegal.org
LAMBDA LEGAL
120 Wall Street, 19th Floor
New York, New York 10005
Telephone: (212) 809-8585

DIMITRI D. PORTNOI (SBN 282871)
dportnoi@omm.com
MICHAEL J. SIMEONE (SBN 326844)
msimeone@omm.com
ELIZABETH A. ARIAS (SBN 318283)
earias@omm.com
SHIVANI I. MORRISON (SBN 342874)
smorrison@omm.com
O'MELVENY & MYERS LLP
400 South Hope Street, 18th Floor
Los Angeles, California 90071
Telephone: (213) 430-6000

SHILPI AGARWAL (SBN 270749)
sagarwal@aclunc.org
ACLU FOUNDATION OF NORTHERN CALIFORNIA
39 Drumm Street
San Francisco, California 94111
Telephone: (415) 621-2493

Attorneys for Proposed Intervenors

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION**

JANINE CHANDLER, et al.,

Plaintiffs,

v.

CALIFORNIA DEP'T OF CORRECTIONS
AND REHABILITATION, et al.,

Defendants.

Case No. 1:21-cv-01657-JLT-HBK

**PROPOSED INTERVENORS' NOTICE
OF MOTION AND MOTION FOR
LEAVE TO FILE A SUPPLEMENTAL
REPLY IN SUPPORT OF
DEFENDANTS' MOTION TO STRIKE**

Judge: Hon. Jennifer L. Thurston
Courtroom: 4, 7th Floor

1 TO THE COURT, AND THE PARTIES, BY AND THROUGH THEIR COUNSEL OF
2 RECORD:

3 PLEASE TAKE NOTICE that Proposed Intervenor will and hereby do move the Court
4 for leave to file a Supplemental Reply in Support of Defendants' Motion to Strike, Dkt. No. 38,
5 pursuant to Local Rules 137(c) and 230(m). Proposed Intervenor make this request for the
6 narrow purpose of submitting a declaration that counsel for Proposed Intervenor obtained on
7 June 29, 2022 made by Asia Davis, the "A.D" alleged in Plaintiffs' briefs and declarations to
8 have been assaulted by a transgender woman. The declaration shows that Plaintiffs' rumors and
9 accusations of a "May 2022 Alleged Rape" are entirely false. Dkt. No. 36 at 6. *See* Huppert
10 Decl.

11 As explained in the attached declaration, good cause exists to grant this request. *See*
12 Huppert Decl. Proposed Intervenor did not plan to file any Reply in Support of Defendants'
13 Motion to Strike until this declaration, which they received on June 29, came to light. Huppert
14 Decl. ¶7. The declaration was not available to Proposed Intervenor until that date, and Proposed
15 Intervenor's counsel transmitted the declaration to counsel for Plaintiffs and Defendants less than
16 24 hours after obtaining it. Huppert Decl. ¶6, 8. Thus, the inability to file the declaration before
17 the reply deadline on Defendants' Motion to Strike was due to intervening circumstances beyond
18 the Proposed Intervenor's control, and counsel acted promptly to inform the parties of the
19 existence of conclusive evidence demonstrating that the "May 2022 Alleged Rape" simply did not
20 happen.

21 Because Proposed Intervenor's counsel transmitted the declaration to the parties the very
22 next day after they obtained it, and because this request is made only eight days after the original
23 reply deadline, there is little risk of prejudice to Plaintiffs.¹ Plaintiffs themselves did not
24 explicitly request that this Court look at their far-ranging extrinsic evidence and decide the
25 Motions to Dismiss and Strike under a Rule 56 standard until their second Opposition brief on

26 ¹ It is within the Court's discretion to consider a declaration submitted with a Reply where it is a
27 "reasonable response" to the opposition. *United States ex rel. Doe v. Biotronik, Inc.*, No. 2:09-
28 CV-3617-KJM-EFB, 2015 WL 6447489, at *3 (E.D. Cal. Oct. 23, 2015), *aff'd in part, appeal dismissed in part on other grounds sub nom. United States ex rel. Sant v. Biotronik, Inc.*, 716 F.
App'x 590 (9th Cir. 2017).

June 16, Dkt. No. 41. Plaintiffs’ declarations continue to be inadmissible and improper for the reasons explained in Proposed Intervenor’s earlier briefing, Dkt Nos. 32 and 40, and so their request will likely not be granted, further reducing the possibility of prejudice. But the accusations Plaintiffs filed with this Court are scandalous and incendiary, and evidence clearly refuting them should be presented even if the Court will ultimately disregard *all* of the extrinsic evidence.

Meet and confer efforts have been exhausted. Pursuant to the Court’s standing order, counsel for Proposed Intervenor solicited the parties’ position on this Motion by email in a meet and confer communication to which they attached the declaration on June 30, 2022. *See* Huppert Decl. ¶8. In this communication, counsel for Proposed Intervenor also invited Plaintiffs’ counsel to withdraw or correct the false allegations and suggestions concerning the nonexistent “May 2022 Alleged Rape.” *Id.* Plaintiffs’ counsel first responded by email on June 30, 2022, indicating that they opposed the motion and declining the invitation to withdraw or correct the statements. Then, on July 5, Plaintiffs’ counsel indicated that they did *not* oppose the declaration being filed but that they intended to file it in the context of their own forthcoming motion. Also on July 5, 2022, counsel for Defendants indicated that they did not oppose the request for leave to file the supplemental Reply and the declaration, but that they would not stipulate to the filing of either; they also stated that their position was limited to the Motion to Strike and they opposed further briefing in general.

In light of Plaintiffs’ June 16 explicit request that the Court consider their declarations and resolve the Motions to Dismiss and Strike under a Rule 56 standard, and being now in possession of a declaration showing the anonymous third-party rumors of a sexual assault by a transgender woman put before this Court by Plaintiffs to be completely false, Proposed Intervenor request permission to correct the record.

Pursuant to Local Rule 137(c)’s requirement that, “if a document requires leave of court . . . counsel shall attach the document proposed to be filed as an exhibit to the moving papers seeking such leave and lodge a proposed order,” the proposed Reply, the declaration, and a proposed order are attached to this Motion.

Dated: July 5, 2022

Respectfully Submitted,

By: s/ Nora Huppert

NORA HUPPERT

RICHARD SAENZ

CHRISTINA S. PAEK

LAMBDA LEGAL

DIMITRI D. PORTNOI

MICHAEL J. SIMEONE

ELIZABETH A. ARIAS

SHIVANI I. MORRISON

O'MELVENY & MYERS LLP

SHAWN MEERKAMPER

TRANSGENDER LAW CENTER

AMANDA C. GOAD

**ACLU FOUNDATION OF SOUTHERN
CALIFORNIA**

SHILPI AGARWAL

**ACLU FOUNDATION OF NORTHERN
CALIFORNIA**

Counsel for Proposed Intervenors